

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

**BIG LOTS, INC., et al.,

Debtors**

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF COMMODORE REALTY,
INC. AS PROPERTY MANAGER FOR VENICE PLAZA, LTD. WITH RESPECT TO
PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASE FOR PREMISES AT
565 U.S. 41 BYPASS NORTH, VENICE FL, 34285**

Commodore Realty, Inc., as property manager for Venice Plaza, Ltd. (collectively, “**Landlord**”), files this Limited Objection and Reservation of Rights with Respect to Proposed Assumption and Assignment of Lease for Premises at 565 U.S. 41 Bypass North, Venice FL, 34285 and, in support, states:

I. BACKGROUND

1. Debtor Big Lots Stores, Inc. and Venice Plaza, Ltd. are currently parties to a Lease originally dated September 14, 1993, as subsequently amended and modified (the “**Lease**”) for premises at 565 U.S. 41 Bypass North, Venice FL 34285. Debtor Big Lots, Inc. has guaranteed the obligations under the Lease.

2. On September 9, 2024, the Debtors filed voluntary petitions commencing these Chapter 11 cases, which are being jointly administered.

3. On October 30, 2024, Debtors filed a Notice of Successful Bidder for the sale of Debtors’ assets advising that the bid of Gateway BL Acquisition, LLC, an affiliate of Nexus Capital Management LP, the designated Stalking Horse, was accepted at the auction held on October 28, 2024, with certain modifications read into the record, and the assignee of the Stalking Horse became the successful bidder (“**Successful Bidder**”).

4. Pursuant to the Bidding Procedure Order [ECF No. 612], Debtors are potentially assuming and assigning certain unexpired contracts and leases to the Successful Bidder or its assignee. On October 31, 2024, filed a Notice of Proposed Assumption and Assignment of Executory Contract or Unexpired Leases and Cure Amounts (the “**Notice**”) [ECF No. 683], which provided that on closing of the sale transaction with the Successful Bidder, Debtors intend to assume and assign the leases listed on Schedule A thereto, which list included the Lease with a scheduled cure amount due of \$20,600.00.

5. Pursuant to the Notice, objections to any proposed assumption and assignment and scheduled cure amounts are to be filed and served by November 6, 2024 at 4:00 p.m. A hearing to approve the proposed sale is scheduled for November 12, 2024.

II. LIMITED OBJECTION

6. It is uncontroverted that the Lease is a shopping center lease entitled to the full protections of Section 365(b) of the Bankruptcy Code. Therefore, prior to any assumption and assignment of the Lease, the Debtor is required to provide adequate assurance: (a) that the Debtor will promptly cure all defaults under the Lease; (b) of the future performance of any proposed assignee; (c) that the assumption and assignment of the Lease is subject to all terms, conditions and restrictions in the Lease and Landlord will receive the full protections of Sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code. Landlord will require that the Debtor be put to strict proof of the ability of the ultimate assignee to provide adequate assurance of future performance mandated by the Bankruptcy Code.

7. While the Notice assigns a cure amount of \$20,600.00 in connection with assumption and assignment of the Lease, rental obligations are due for the month of September, 2024 in the amount of \$20,600.00, and, as of this filing, Landlord has yet to receive rent for November, 2024 in the amount of \$20,600.00. In addition, two pre-petition monthly rental payments were made late resulting in billed and unpaid late fees of \$2,060 each. Therefore, monthly rent obligations and late fees are past due in an amount aggregating \$45,320.00 (the “**Actual Cure Amount**”).

8. Furthermore, any proposed assumption and assignment of the Lease is subject to all Lease obligations that have accrued but not yet been billed, including true-ups/reconciliations for real estate taxes and insurance for 2024, as well as indemnity obligations and attorney's fees incurred in connection with curing defaults (the "**Additional Obligations**").

9. Therefore, in order to assume and assign the Lease, the Actual Cure Amount plus all accrued and unpaid Additional Obligations under the Lease must be satisfied.

III. RESERVATION OF RIGHTS

10. Landlord reserves its right to amend this Objection to: (a) assert any additional amounts which may be owed under the Lease; (b) object to any assumption and assignment proposed; and (c) enforce Landlord's rights under Sections 365(b)(1) and (3) and 365(f)(2)(B) of the Bankruptcy Code.

WHEREFORE, Commodore Realty, Inc. as property manager for Venice Plaza, Ltd. requests, that the Court enter an Order in conformity with this Limited Objection and Reservation of Rights, and grant such other relief may be just.

Dated: November 6, 2024

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AS PROPERTY MANAGER FOR VENICE
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CERTIFICATE OF SERVICE

I, Joyce A. Kuhns, hereby certify that on November 6, 2024, a copy of the foregoing was filed electronically through the Court's CM/ECF system and served by electronic service via the Court's CM/ECF system on all parties who have registered for electronic service in these cases, as well as on the following parties in the manner indicated.

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